No. 22,543

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner

v.

HOLLY BRA OF CALIFORNIA, INC., Respondent

ON PETITION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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JURISDICTION

This case is before the Court on petition of the National Labor Relations Board pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*)[1] for enforcement of its order (R. 55-57)[2] against respondent issued May 26, 1967, and reported at 164 NLRB No. 151. This Court has jurisdiction, since the unfair labor practices occurred in Los

[1] The pertinent statutory provisions are reprinted in the Appendix A, *infra*, p. 17.

[2] References designated "R." are to Volume I of the Record as reproduced pursuant to Rule 10 of this Court. References designated "Tr." are to the reporter's transcript of the testimony as reproduced in Volume II of the record. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

Angeles, California, where respondent is engaged in the business of manufacturing and selling women's undergarments and swimwear. There is no issue concerning the Board's jurisdiction in the case.

STATEMENT OF THE CASE

I. THE BOARD'S FINDINGS OF FACT

Briefly, the Board found that the Company violated Section 8(a)(1) of the Act by interfering with, restraining and coercing employees in the exercise of rights guaranteed in Section 7. The Board further found that the Company violated Section 8(a)(3) and (1) of the Act by subjecting Dulce Fumero to discriminatory working conditions, thus forcing her to leave her employment, and by refusing to rehire her. The evidence upon which the Board's findings are based is summarized below.

A. Background

The Union[3] began an organizational campaign among respondent's employees in the latter part of January 1966,[4] and held a meeting of employees in the home of Dulce Fumero on February 10 (R. 24; Tr. 12). On February 21, the Union filed a petition with the Board seeking certification of an appropriate bargaining unit, which resulted in a consent election held on March 31 (R. 24). The result of the election was 43 ballots cast for the Union, 44 against it and four challenged ballots (R. 21). Thereafter, on April 5, the Union filed objections to the election results based on company misconduct, and subsequent to that filed additional charges of unfair labor practices against respondent (R. 22).

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[3] Los Angeles Dress & Sportswear Joint Board, a subordinate body of the International Ladies Garment Workers Union, AFL-CIO.

[4] Unless otherwise noted, all dates refer to 1966.

B. Respondent's pre-election misconduct

Within a week following the February union meeting, plant manager Mitsuo Yoshida questioned employee Fumero about her knowledge of the Union and what she expected of it (R. 25; Tr. 12). In reply to Fumero's explanation that the Union would provide employees with greater benefits, Yoshida told her the Union would not keep the promises it made and if she desired greater benefits she should seek employment elsewhere (R. 25; Tr. 13-14). On another occasion, Yoshida summoned her to his office and speaking through supervisor Genovena Sanchez as interpreter[5] accused her of being "the initiator of the [union] problem at the plant" and that he "wanted [her] not to be seeking out anyone or winning anyone with these problems" (R. 25; Tr. 15). He further suggested that "after everything would be over" the management "would try to better . . . wages," but did not "want that kind of problem" at the plant (R. 25; Tr. 16).

Immediately following the February union meeting, Yoshida also called employee Geraldine Wilson to his office and stated that a "rumor was going through the shop" that there had been "a meeting among the colored girls," and asked her if she knew anything about it (R. 26; Tr. 72). Wilson was also questioned by Company Secretary-Treasurer David Young who asked her how the employees "felt" about the union (R. 26; Tr. 75). On a similar occasion, Young told Wilson that if the Union won the election, the Company "would just as soon close down and forget it, because they couldn't meet union demands." Young also told Wilson that Cole and Olga[6] had no knowledge of the union organizational attempt and "there was a possibility they

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[5] Several of the Company's employees including Fumero were Spanish speaking, requiring the use of an interpreter during many plant discussions and also necessitating the use of one at the hearing.

[6] Respondent had contracts to produce swimsuits and beach robes for Cole Swimwear and brassieres and girdles for Olga Mfg. (R. 23; Tr. 193-194).

would withdraw their contract, because they were not union shops themselves" (R. 26; Tr. 73-74).

Juana Yanez was also called to Manager Yoshida's office in the pre-election period. Yoshida told her he wished to make sure that the employees understood what they were doing regarding unionization, and that "if the union enters the factory, Cole and Olga will terminate their contracts," in which event "many people" including Yanez' two cousins would lose employment (R. 26; Tr. 63).

In early March, after a meeting of all employees called by Young concerning the forthcoming election, Manager Yoshida approached employee Ahyda Medina at her work station and asked if the girls with whom she had stood at the meeting were for the Union and were they convincing her (R. 27; Tr. 111-112). Medina was also interrogated by Young on another occasion when he asked her about the union sympathies of her fellow employee, Cecelia Valencia (R. 27; Tr. 110).

On March 30, the day before the election, Yoshida and Young toured the plant and spoke to all the Company's employees in small groups. Yoshida, while speaking to three employees, including Wilson and Yanez, stated that "management was aware of those who had signed cards and sent them into the union," and had "ways of finding out things just like the union has." Yoshida then expressed the hope that they would make the "right decision" in the election (R. 26; Tr. 76).

On the morning of the election, Dulce Fumero was once more summoned to Yoshida's office where she was instructed not to talk to "anyone about the union" since he was precluded from further discussion of union problems (R. 25; Tr. 19).

C. Discrimination against Dulce Fumero

Fumero was first employed by the Company in 1963 and until the union election was considered a satisfactory and competent employee (R. 36). She was a moving force behind the Union's organizational drive, a fact well known to the Company (R. 24, 39; Tr. 234-235).

For about seven months prior to the election, Fumero performed sewing operations on swimsuits (R. 36; Tr. 33). She had never been criticized for her work and had also trained another employee to do the same type of work (R. 36; Tr. 30-32). A few days after the election, Manager Yoshida, in the presence of Fumero's immediate supervisor, Hazel Smith, charged Fumero with inferior work and returned 400 or 500 swimsuits sewn by her for her to repair (R. 36; Tr. 32-36). Fumero protested that the work was not faulty, but nevertheless she was directed to repair it (R. 36; Tr. 33-34). Approximately five days later, Yoshida informed Fumero that Hazel Smith would no longer accept any of her work without another supervisor's close inspection (R. 37; Tr. 37-38). Fumero replied that she was not a new operator, that she had worked in the plant on many jobs and was not irresponsible, and that an inspection procedure directed at her alone would make her "the object for a show for everybody" (R. 37; Tr. 38). She then requested Yoshida to give her "a layoff with a document so that [she] . . . could work elsewhere" (*ibid.*). Yoshida rejected her request, telling her that she could do what she wished and that a replacement for her was available from a list maintained by the State Employment Office (*ibid.*). Fumero told him that she felt "nervous" and "sick" and left the plant for the balance of the day (R. 37; Tr. 39, 40).

The following week, Fumero was assigned to darting beach robes, the plant's "simplest" sewing operation. However, she was also assigned Supervisor Genovena Sanchez as her

personal inspector (R. 37; Tr. 37-38).[7] Once more, fault was found with her work and many robes were returned for repair (Tr. 44-46).[8]

Within a week of her assignment to darting robes, Fumero approached Manager Yoshida and Efrem Young, the Company's President, stating that she was under a doctor's care for a nervous condition, and feared that her state of health was deteriorating because she could not work "with someone watching or looking over [her] . . . every minute" (R. 38; Tr. 48, 49). Young answered rhetorically: did she think that "to disrupt good work or employment permitted good treatment" and then terminated the conversation without letting Fumero reply (*ibid.*).

Finally, on May 6, after a doctor's appointment, Fumero informed Yoshida that her nervous condition was not improving and upon her physician's advice was requesting a month's leave for complete rest (R. 39; Tr. 51-52). Yoshida agreed to permit her return after she recuperated (*ibid.*). Approximately one month later, Fumero called Yoshida, informed him that her medical disability had ended and inquired as to when she could return to work (R. 39, 42; Tr. 54). She was told to report to the plant and did so the next morning (*ibid.*). Yoshida, at that time, informed Fumero that it would be impossible for her to return to work because of her nervous condition (R. 39, 42; Tr. 55).[9]

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[7] For Fumero as well as other employees, normal routine supervisory examination of their work product took place no more than three or four times daily. However, Sanchez inspected Fumero's work constantly on a piece-by-piece basis (R. 18; Tr. 41, 312). Furthermore, Sanchez was a brassiere department supervisor who had no other duties in the swimwear section where Fumero was employed (R. 37).

[8] Fumero was a piece worker, and repair work was not compensated for on a piece rate basis, but at a minimum hourly rate which resulted in her earning less money (R. 39; Tr. 289).

[9] Before the election, employee Geraldine Wilson overheard Hazel Smith, then Fumero's supervisor, relate to another employee that "as soon as the election was over . . . she had some plans for Dulce [Fumero]" (R. 23; Tr. 77).

II. THE BOARD'S CONCLUSIONS AND ORDER

Upon the foregoing facts, the Board found that the Company violated Section 8(a)(1) of the Act by interfering with, restraining and coercing employees in the exercise of rights guaranteed in Section 7. The Board further found that the Company violated Section 8(a)(3) and (1) of the Act by imposing discriminatory working conditions on Dulce Fumero, thereby causing her to leave her employment, and by refusing to rehire her.

The Board's order requires the Company to cease and desist from the unfair labor practices found and from in any other manner infringing upon its employees' rights under the Act. Affirmatively, the Board's order requires the Company to offer reinstatement to employee Dulce Fumero, to make her whole for any loss of pay suffered as a result of the discrimination against her, and to post appropriate notices. Finally, the Board ordered the election of March 31 set aside and ordered that an election by secret ballot be conducted among respondent's employees in the appropriate unit, at such time as the Board's Regional Director deems appropriate (R. 55-57).[10]

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[10] Since the Board's action in setting aside the election and directing a new one does not constitute a final order reviewable under Section 10 of the Act, it is not before the Court in this proceeding. See *American Federation of Labor v. N.L.R.B.*, 308 U.S. 401, 409; *Teamsters, Chauffeurs, Helpers and Delivery Drivers, Local 690 v. N.L.R.B.*, 375 F.2d 966, 968-969 (C.A. 9); *Urethane Corp. of Calif. v. Ralph E. Kennedy*, 332 F.2d 564, 565 (C.A. 9).

ARGUMENT

I.

SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDINGS THAT THE COMPANY VIOLATED SECTION 8(a)(1) OF THE ACT

As shown in the Statement, respondent became aware of the Union's organizational campaign shortly after the first meeting of employees at Dulce Fumero's home. Respondent immediately reacted by threatening employees with reprisals if the union campaign was successful, coercively interrogating them with regard to their union activities and the union sympathies of other employees, prohibiting them from discussing the union, promising wage increases to discourage union activities, and creating the impression of surveillance. Thus, manager Mitsuo Yoshida questioned employee Dulce Fumero about her knowledge of the Union, and warned her that the Union would not keep its promises of benefits and that if she wanted such benefits she should seek employment elsewhere.[11] On another occasion, Yoshida summoned Fumero to his office, accused her of being "the initiator of the [union] problem at the plant" and prohibited her from soliciting for the Union. He further suggested that after the Company surmounted the union "problem," management would try to better wages (Tr. 25-26).

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[11] Conflicting testimony existed with respect to this and other conversations between employees and management representatives, requiring the Trial Examiner to resolve questions of credibility. The Board adopted his credibility findings. It is settled law that "the matter of credibility of the witnesses is not for this court to pass on. This is a function of the Trial Examiner and of the Board." *N.L.R.B. v. Thrifty Supply Co.*, 364 F.2d 508, 509 (C.A. 9). Accord: *N.L.R.B. v. Local 776 I.A.T.S.E.*, 303 F.2d 513, 518 (C.A. 9), cert. denied, 371 U.S. 826. We submit that the Trial Examiner's credibility resolutions which were adopted by the Board are entitled to affirmance here.

Immediately after the February 10 union meeting, Yoshida quizzed employee Geraldine Wilson about a rumor of a meeting among some of the girls and whether she knew anything about it. Wilson was also interrogated by Secretary-Treasurer David Young who wanted to know how the employees "felt" about the Union. Young also warned Wilson that if the Union won the election, the Company "would just as soon close down and forget it, because they couldn't meet union demands" (Tr. 73, 74-75).

Yoshida also called employee Juana Yanez to his office where he cautioned her to make sure she knew what she was doing with regard to plant unionization. Yanez was then advised that a union election victory would result in the plant losing contracts, the result of which would be "many people," including her two cousins, being without employment (Tr. 63).[12]

In early March, following an employee meeting, employee Ahyda Medina was interrogated by Yoshida as to whether the girls with her at the meeting were for the Union and also whether they had convinced her. Still later, Medina was again interrogated by Young who wanted to know if employee Ceceila Valencia was a union adherent.

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[12] Before the Board the Company argued that Yanez's testimony as well as that of other Spanish speaking employees is not entirely credible because of the language barrier which required the use of an interpreter at the hearing. However, it is to be noted that the interpreter, an experienced court linguist, was agreed upon by all parties concerned. Further, respondent made no motion to correct the transcript as reported. Therefore, the Trial Examiner's reliance upon witnesses' statements as interpreted was valid and proper. See *Lujan v. United States,* 209 F.2d 190, 192 (C.A. 10); *State v. Cabodi,* 18 N.M. 513, 138 P. 262, 263; *State v. Sauer,* 21 Minn. 591, 15 NW 2d 17, 20. Moreover, any interpretation is somewhat inexact due to language irregularities. Here, however, these invariable slight discrepancies in interpretation did not prejudice the respondent, whose anti-union animus and widespread coercive conduct formed the basis for the Board's findings.

Immediately preceding the election, Yoshida, while speaking to a small group of employees including Wilson and Yanez, told them "management was aware of those who signed cards and sent them into the union," and had "ways of finding things just like the union has" (Tr. 76). Finally, on the day of the election, Fumero was told she could no longer speak with anyone about the Union.

We submit that the foregoing evidence amply substantiates the Board's conclusion that respondent interfered with its employees' statutory rights in violation of Section 8(a)(1). Interrogating employees about their union sympathies: *N.L.R.B. v. Luisi Truck Lines,* 384 F.2d 842, 845 (C.A. 9); *N.L.R.B. v. Harrah's Club,* 362 F.2d 425, 428 (C.A. 9); *N.L.R.B. v. Security Plating Co.,* 356 F.2d 725, 728 (C.A. 9). Threatening reprisals for union activities: *N.L.R.B. v. Luisi Truck Lines, supra; N.L.R.B. v. Sebastopol Apple Growers Union,* 269 F.2d 705, 708 (C.A. 9); *N.L.R.B. v. Ambrose Distributing Co.,* 358 F.2d 319, 320-331 (C.A. 9), cert. denied, 385 U.S. 838; *N.L.R.B. v. V. C. Britton Co.,* 352 F.2d 797, 798 (C.A. 9); *N.L.R.B. v. Parma Water Lifter Co.,* 211 F.2d 258, 261-262 (C.A. 9), cert. denied, 348 U.S. 829. Creating the impression of surveillance: *N.L.R.B. v. Security Plating Co., supra;* also see *N.L.R.B. v. Prince Macaroni Mfg. Co.,* 329 F.2d 803, 805-806 (C.A. 1); *N.L.R.B. v. S & H Grossinger's, Inc.,* 372 F.2d 26, 28 (C.A. 2); *Hendrix Mfg. Co. v. N.L.R.B.,* 321 F.2d 100, 104-105 (C.A.5). Promising benefits during an election campaign: *N.L.R.B. v. Luisi Truck Lines, supra; N.L.R.B. v. Security Plating Co., supra; N.L.R.B. v. Kit Mfg. Co.,* 292 F.2d 686, 690 (C.A. 9); *N.L.R.B. v. Laars Engineers, Inc.,* 332 F.2d 664, 667 (C.A. 9), cert. denied, 379 U.S. 930; *N.L.R.B. v. Parma Water Lifter Co., supra;* see also *N.L.R.B. v. Exchange Parts Co.,* 375 U.S. 405, 409-410.

Respondent argued before the Board that its actions were merely trivial instances and that in fact, no employee was actually intimidated. However, coercive interrogation and

threats involving five employees and the President, Secretary-Treasurer, Plant Manager and other supervisors can hardly be considered trivial. Furthermore, violations of Section 8(a)(1) of the Act are not dependent upon a showing that employees are actually coerced. The test is whether the conduct tends to be coercive rather than "whether or not [employees] were coerced in actual fact." *N.L.R.B. v. Associated Naval Architects, Inc.,* 355 F.2d 788, 791 (C.A. 4). Also see, *N.L.R.B. v. West Coast Casket Co.,* 205 F.2d 902, 904 (C.A. 9) and cases cited, *N.L.R.B. v. Camco, Inc.,* 340 F.2d 803, 804, n. 6 (C.A. 5), cert. denied, 382 U.S. 926; *N.L.R.B. v. Kingsford,* 313 F.2d 826, 832 (C.A. 6); *Corrie Corp. of Charleston v. N.L.R.B.,* 375 F.2d 149, 153 (C.A. 4).

Respondent also contended that statements of Young and Yoshida regarding the Company's future if the union campaign was successful, were mere predictions or opinion protected by Section 8(c) of the Act. That section protects the expression of "views, argument or opinion" *only* when unaccompanied by threat of reprisal or promise of benefits. It did not, however, privilege statements by Young and Yoshida that the Union's victory would cause many people to lose employment, and that respondent would close down and "forget it" since it could not meet union demands. As the Fifth Circuit stated in *N.L.R.B. v. Nabors,* 196 F.2d 272, 276 (C.A. 5), cert. denied, 344 U.S. 865:

> [W]hen statements such as these are made by one who is a part of the company management, and who has the power to change prophecies into realities, such statements whether couched in language of probability or certainty, tend to impede and coerce employees in their right to self-organization, and therefore constitute unfair labor practices.

Accord: *N.L.R.B. v. Geigy Co.,* 211 F.2d 553, 557 (C.A. 9), cert. denied, 348 U.S. 821; *N.L.R.B. v. Security Plating Co., supra,* 356 F.2d at 728 (C.A. 9).

II.

SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDING THAT THE COMPANY VIOLATED SECTION 8(a)(3) AND (1) OF THE ACT BY DISCRIMINATORILY CAUSING TERMINATION OF THE EMPLOYMENT OF DULCE FUMERO AND BY REFUSING TO REHIRE HER

As the record shows, shortly after the union campaign began among respondent's employees, Manager Yoshida accused Fumero of being the "initiator" of the effort, and warned her to stop her attempts at "winning" employees over to the Union (Tr. 15-16). Both Yoshida and Secretary-Treasurer Young testified that they knew that Fumero was the prime mover behind the Union's organizational drive (R. 25, 39; Tr. 234, 235, 272, 279). The evidence is further clear that respondent had a strong desire to thwart the employees' organizational activities, and undertook by numerous unlawful means to do so. Thus, various employees were threatened with reprisals if the union campaign was successful, were coercively interrogated with regard to their union activities and were given the impression that their activities were under surveillance. Furthermore, Supervisor Hazel Smith informed another employee that "as soon as the election was over . . . she had some plans for Dulce [Fumero]" (Tr. 77).

Accordingly, immediately following the election, as shown *supra*, respondent embarked upon a course of conduct designed to harass Fumero and which ultimately caused her to quit. This effort was initiated by Manager Yoshida and Supervisor Smith who made her the target of criticism for allegedly defective work on 400-500 swimsuits. Fumero's work had never before been criticized, and she had, in fact, trained another employee to do the type of sewing on swimsuits that she performed. Despite Fumero's protest that her sewing of the swimsuits was not faulty, she went through the needless motion of resewing them, but again, five days later, new criticism was leveled at her. This time Yoshida

told her that Supervisor Smith (who previously had said that she had "plans" for Fumero as soon as the election was over) would not accept Fumero's work without another supervisor's close inspection. Despite her protests over the treatment she was receiving, Fumero, a few days later, was assigned to darting beach robes, respondent's "simplest" sewing operation, under the piece-by-piece inspection of Supervisor Sanchez. Once again, however, work was returned to Fumero which she had to repair at a lower rate of pay than she regularly earned.

As the Board held, a total view of the record leads to the conclusion that respondent's "fault-finding" of Fumero was a "sham aimed at humiliating and punishing her because she was a union activist" (R. 42). In reaching this determination, the Board found that the evidence failed to support respondent's allegations that Fumero's work after the election was deficient (R. 43). In this respect, it is significant that she was an experienced sewing machine operator who, in her three years of employment by respondent prior to the election, had worked on every type of sewing operation in the plant, including those in question on swimsuits and robes, and had given satisfactory service (R. 41; Tr. 30-33). Manager Yoshida conceded that prior to the election he had never received a complaint about Fumero's performance from any supervisor, and had never seen any inferior work by her (R. 41; Tr. 300, 301). Nevertheless, as part of respondent's discriminatory campaign against Fumero, immediately following the election, she was subjected to baseless criticism of her work, requirements of unnecessary "repairs" for which she was paid below her regular rate, and piece-by-piece inspection of her work which respondent knew embarrassed her in front of her fellow workers. When Fumero complained about the treatment she was receiving and indicated that it was making her "nervous" and "sick," Yoshida stated that respondent could get a replacement for her from the State Employment Office (Tr. 38, 39). Fumero complained again a short time later to Yoshida and Company President Efrem Young that she could not work with

someone watching her "every minute," and that as a result she was nervous and under a doctor's care (Tr. 49). Evidence of the fact that her union activities were the basis of all her troubles, however, was Young's response; he suggested that she could not "disrupt" conditions in the plant and expect "good treatment" (Tr. 49).

The Board reasonably concluded that unjustified fault-finding, impediment to her earning capacity and an intensive and unusual inspection procedure applicable only to her would rationally explain Fumero's feeling of humiliation and the emotional upset that she experienced (Tr. 41). The Board therefore rejected as incredible respondent's assertion that Fumero was not really incompetent, but that she intentionally produced faulty work because she wanted to be laid off so that she could draw unemployment compensation. This conflicts, in the first place, with the Board's finding that her work was not deficient. Secondly, since respondent's harassment of Fumero had produced a serious emotional upset requiring medical treatment, it strains credulity to suggest that she would have intentionally prolonged this condition by continuing to turn out faulty work. Finally, the record shows that Fumero had children of school age and as a factory worker presumably was dependent on her earnings (R. 41, 42; Tr. 289). It is unlikely in the extreme, therefore, that she would have deliberately sought discharge and cessation of her regular income. Furthermore, as is well known, California, in common with other states, denies unemployment compensation benefits to one discharged for misconduct.[13] The Board therefore found it altogether implausible to believe that Fumero would resort to so self-defeating a dodge as the misconduct attributed to her, which would have the effect of depriving her of the unemployment compensation she was allegedly seeking (R. 41).

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[13] California Unemployment Insurance Code, Sec. 1256 (Deering's Calif. Codes).

Since, as the Board found, respondent's campaign against Fumero was undertaken with the "aim of humiliating her, and making her employment burdensome and intolerable in order to induce her to quit and thus rid the plant of a union activist" (R. 43), it is hardly surprising that when she applied for reemployment after her month's medical leave of absence, she was told that it was impossible for her to return as there was no work for her. Obviously, for respondent to have restored her to a job at that time would be to undo the success that had been realized in removing her from the scene a month earlier.

In sum, the record provides abundant support for the Board's finding that respondent subjected Fumero to a discriminatory campaign of harassment that made her employment so burdensome and intolerable that she was forced to leave it on May 6, 1966, and that this course of conduct, as well as the refusal subsequently to reemploy her, was motivated by respondent's hostility to her union activity. Unquestionably, respondent thereby violated Section 8(a)(3) and (1) of the Act. *N.L.R.B. v. Tennessee Packers, Inc., Frosty Morn Division*, 339 F.2d 203, 204-205 (C.A. 6); *N.L.R.B. v. Saxe-Glassman Shoe Corp.*, 201 F.2d 238, 243 (C.A. 1); *Bausch and Lomb Optical Co. v. N.L.R.B.*, 217 F.2d 575, 577 (C.A. 2); *N.L.R.B. v. Monroe Auto Equipment Co.*, No. 24,881, decided April 4, 1968, 67 LRRM 2973 (C.A. 5), enforcing, 159 NLRB 613, 622-625; *N.L.R.B. v. Vacuum Platers, Inc.*, 374 F.2d 866, 867 (C.A. 7), enforcing, 154 NLRB 588.

CONCLUSION

For the reasons stated, it is respectfully submitted that the Board's order should be enforced in full.

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May 1968.

CERTIFICATE

The undersigned certifies that he has examined the provisions of Rules 18 and 19 of this Court, and in his opinion the tendered Brief conforms to all requirements.

Marcel Mallet-Prevost
Assistant General Counsel
National Labor Relations Board

APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et. seq.*), are as follows:

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

UNFAIR LABOR PRACTICES

Sec. 8. (a) It shall be an unfair labor practice for an employer–

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization;

* * *

APPENDIX B

Pursuant to Rule 18(2) (F) of the Rules of the Court (Numbers are to pages of the Reporter's Transcript).

Exhibit No.	Identified	Offered	Received in Evidence
General Counsel's			
1(a) through 1(v)	4	4	5
2	134	134	135
3	152	152	154
4	171	(not offered)	
5	243	(not offered)	
Respondent's			
1	201	201	202
2	202	202	203
3	203	203	203